Supreme Court, U.S.
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No. _____

In the

Supreme Court of the United States

Daniel S Adams, *pro se*, *Petitioner*

v.

State of Tennessee
Donald Sundquist, Governor
Paul Summer, Attorney General, *Respondents*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit Court

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A Petition for Writ of Certiorari

Daniel S Adams, *pro se*, Plaintiff/ Appellee
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Question One

Does the Fourteenth Amendment's due process and equal protection clauses prohibit the restrictions placed on a Physical Therapist through Tennessee's Health Planning Act?

Question Two

Does a Physical Therapist, attempting to provide his professional services to the disabled, have standing to file suit against a State under the Americans' with Disabilities Act?

List of all parties

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v.

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Corporate Disclosure

Mr. Adams has filed this and all related petitions as an individual. There are no corporate interests in this case.

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US Constitution- Fourteenth Amendment

42 USC, section 1983.

Americans with Disabilities Act.

TCA 68-11-102, 106, 201

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State v. Gateway Mortuaries, 287 P 156, 87 Mont 225, 68 ALR 1512. page 13.

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West Virginia State Board of Education v. Barnette, 319 US 624. page 11.

Citations of orders in the case

The Appellant Court has upheld the District Court's ruling, denied an *en banc* request for review, and the requested reconsideration effort.

The District Court ruled on a judgment of pleadings that the Tennessee Health Planning Act is a legitimate legislative act regulating home based physical therapy services. The Court also ruled Mr. Adams lacks standing to file action under the Americans with Disabilities Act.

Basis of Jurisdiction for this Court:

On September 12, 2003, the Sixth Circuit Court of Appeals entered a denial for *en banc* review, effective upholding that Court's ruling of June 23, 2003 denying Mr. Adams constitutional and ADA claims.

Mr. Adams contends this Court has jurisdiction under 42 USC section 1983; and ADA. Because the lower Courts have erred significantly in their rulings, so far from standards of established law as to create a new precedent inconsistent with the Supreme Court and other lower Courts of this land, Mr. Adams contends it is the duty of this Court to act. Mr. Adams believes his fundamental rights to Liberty and Property, as guaranteed under the Constitution, have been improperly denied by the lower Courts.

Because the State of Tennessee, its past Governor, and current Attorney General are all active parties to this suit questioning the Constitutionality of State law, Supreme Court rules 29.4 (b) and (c) do not apply.

Verbatim Constitutional provisions of the case with appropriate citation

The Fourteenth Amendment states:

> *"Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

Argument for Writ of Certiorari

This case was filed in the US District Court, Greeneville, Tennessee under USC Title 42, Chapter 21, Section 1983, protecting a citizen from State's actions, and the Americans with Disabilities Act.

At the time of filing this case, the Health Planning Act of Tennessee (TCA 68-11-102, 106, 201)[1] required

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[1] Since the original filing of this case, the State has revised the Health Planning Act; the requirements of Home Care Organizational Licensing remain intact for home based Physical Therapy services under TCA 68-11-201, 4 (B) (ii) for Assisted-care Living Facilities; and 68-11-201, 18 (A) (i-v), (D), 21 (B). The essence of the

all Physical Therapy services provided in the home setting (temporary or permanent) be provided by a licensed Home Care Organization. Mr. Adams as a Tennessee licensed Physical Therapist has challenged that law in the District and Sixth Circuit Appellant Courts as being unconstitutional under the 14th Amendment and as a violation of Title II of the ADA.

The State has said it is a proper application of its police powers to regulate Physical Therapy services in the home setting due to the health, safety and general welfare of its citizens. Most Physical Therapy services provided in the home setting must be provided by Home Care Organizations (a.k.a., Home Health Agencies) under the Health Planning Act. There are exceptions for the Departments of Education and Mental Health, as well as county health departments. In those special settings, a

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law is unchanged- a Physical Therapist must work for a Home Health Agency in the home setting.

Physical Therapist may choose to contract his/her professional services directly to those Departments.[2]

It is Mr. Adams' contention that State has exceeded its proper application of its police powers in this case. He believes the State is not protecting the public through this legislative action, but rather protecting the Home Health Agencies of the State. These actions therefore are an arbitrary application of the Legislature, and directly violate his natural rights, rights protected by the Constitution. Mr. Adams is denied the right to work in his chosen, lawful and useful profession by an arbitrary application of a licensure statue.

There is a fine line between legislation and liberty; between regulation and rights, between protection of the public and protection of the individual's freedoms. Our Constitution recognizes the severity of limitations

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[2] TCA 68-11-201 (J) excludes Department of Health, and Education for the definition of Home Health Service(s).

placed on one's right to work: liberty and property are specifically protected. The right to pursue happiness, while not specifically written in the Constitution, has been held to be as important of a right. The Founding Fathers included prohibitions against bills of attainder, which this Court has held to prohibit bills of pains and penalties forbidding the right to work. Mr. Adams poses his questions to this Court to define in this day and age if the State has exceeded its regulatory authority under its police powers in the regulation of his profession. Mr. Adams readily admits many of the cases he has cited are close to 100 years old; however, the precedents set then have never been overturned and remain valid today.

The Fourteenth Amendment provides the Individual protections from State actions that may improperly infringe on the Individual's rights. One clause of the Amendment states, "…, no person shall be

deprived of Life, Liberty, or Property without due process of law…" Mr. Adams has filed petitions with the District Court, and the Sixth Circuit Court of Appeals without success. He turns now to this Court, our highest Court, because he feels his complaints are fully with merit, and basic to the fundamental freedoms our Founding Fathers designed the Constitution to protect. Mr. Adams contends that the State of Tennessee has deprived him, without due process, of two of the three freedoms specifically mentioned in the "due process" clause: Liberty and Property.

The District Court has found that Mr. Adams claims were without merit; that the State acted within its proper legislative rights. Mr. Adams believes the lower Courts have erred by not clearly recognizing the fundamental rights he has claimed. The District Court, in fact, found Mr. Adams was seeking *new rights*. Acting

under the State's police powers, the Court found the State may require a Physical Therapist wishing to work in the home setting, to provide his/her professional services only through a home health agency. Through its three Judge review panel, and its denial of an *en banc* review, the Appellant Court has upheld this decision.

Mr. Adams contends these actions are so absolutely opposite of the intentions of the Fourteenth Amendment protections, as to pose a substantial and significant potential threat to the most fundamental freedoms for which our Constitution stands. He alleges the Tennessee Health Planning Act violates the very Constitutional protections the Fourteenth Amendment provides, not only to citizens, but to all under the State's jurisdiction.

Mr. Adams contends the State is using inappropriate licensing schemes for the regulation of the

lawful and meaningful profession of Physical Therapy. The secondary license required for home based Physical Therapy services (the Home Care Organization license) is arbitrary and potentially unachievable. To regulate a profession, the State can only apply standards that are achievable by study or application, reasonable and related to the profession[3]. Those standards must be reasonably related to the protection of the public's interests, and not protect the interests of a special class.[4] The State may not create a special class that is only able to work; when another otherwise equally qualified class exists that is forbidden to work.[5] It is alleged by Mr. Adams the State's Health Planning Act prohibits a Physical Therapist from working in the home setting solely to protect the special

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[3] *Dent v West Virginia, 129 U.S. 114 (1889)* ; *Douglas v Noble, 261 U.S. 165 (1923).*

[4] *Douglas v Noble, 261 U.S. 165 (1923).*; Smith v State of Texas, 233 U.S. 630 (1914).

[5] Smith v State of Texas, 233 U.S. 630 (1914).

class of the Home Care Agencies. As a licensed Physical Therapist, Mr. Adams claims he is otherwise equally qualified to provide Physical Therapy services in the home setting, but is prohibited by the Health Planning Act from doing so. By law the Physical Therapist is bound to work only for a home health agency if they practice in the home setting.

A Home Care Organization license is not necessarily achievable. A Certificate of Need (CON) is required before the license can be issued. The CON criteria allow anyone to object to that particular applicant and therefore fails the due process requirements of *Dent v. West Virginia, 129 US 114 (1889).* Adams has also complained the fees for are Home Care Organization are prohibitive in nature (>$3,000.00), and create double taxation. Mr. Adams has paid one licensing fee to practice Physical Therapy in all other settings; a second

licensing fee is required to practice in the home setting. Licensing schemes that create a prohibitive or confiscatory licensing fee of a lawful profession have been held invalid.[6] Licensing legislation may not be a restriction of trade.[7]

Liberty has never fully been defined by the Court; however, Mr. Adams contends as far as this case bears, Liberty's protections are clear. Liberty means more than freedom from prison[8]. Liberty includes Personal Liberty, or the right to enjoyment of life and liberty. Personal Liberty is a fundamental right[9]. It is one of the most scared and valuable rights[10] and is inalienable.[11] It

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[6] US- New State Ice Co v. Liebmann, Oka., 52 SCt 371, 285 US 262, 76 Led 747.; RI- Baffoni v. State Dept Health, 373 A2d 184, 118 RI 226.
[7] Ark.- Hardin v. Croom, 157 SW2d 520, 203 Ark 519; Tex- Ex parte Scoot, 91 SW2d 748, 130 TexCrR 29.
[8] US v. Kaplan, D.C.Ga., 286 F. 963.
[9] West Virginia State Board of Education v. Barnette, 319 US 624.
[10] Ex parte Arata, 198 P. 814, 52 Cal. App. 380.

includes freedom to use one's mind. It includes freedom to earn a livelihood through a lawful and meaningful profession without undue and unnecessary governmental interference[12]. Adams charges the Health Planning Act is an undue and unnecessary burden on his lawful profession. Any doubt which might exist between approving the exercise of uncertain judicial discretion and the liberty of a citizen should be resolved in favor of the citizen.[13]

Liberty also includes the right to contract one's lawful professional services; ***liberty of contract***. The general rule is that the making of contracts shall be free of governmental interference.[14] Liberty to contract for a

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[11] Ind. -Weisenberger v. State, 175 NE 238, 202 Ind. 424.
[12] Jim Burns Baking Co.v. Bryan, 264 US 504 (1924); Lawton v. Steele 152 US 133, 137; Meyer v. Nebraska, 262 US 390, 399.
[13] NY- Girard v. Rossi, 337 NYS2d 34, 40 AD2d 13.
[14] Kealey Pharmacy & Home Care Service, Inc. v. Walgreens Co., DCWis 539 FSupp 1357.

lawful purpose is a basic, fundamental, highly important,[15] natural, inherent, and inalienable[16] right. All statutes which infringe on the liberty to contract are null and void.[17] State laws that constitute an unreasonable restraint on the liberty of individuals to contract are void.[18] Freedom of Contract is the general rule, and restraint the exception. The existence of legislation limiting the freedom to contract can only be justified in exceptional circumstances.[19] Mr. Adams believes this

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[15] Palm Beach Mobile Homes, Inc. v. Strong, 300 So2d 881. Miss- Smith v. Simon, 224 So2d 565. NJ- Abel Holding Co, Inc. v. American Dist Tel Co, 350 A2d 292, 138 NJSuper 137, affirmed 371 A2d 111, 147 NJSuper 263.

[16] Ala- First National Bank v. Jaffe, 196 So 103, 239 Ala. 567. Ariz.- Schrey v. Allison Steel Mfg Co, 255 P2d 604, 75 Ariz. 282. Del- State v. Tabasso Homes, 28 A2d 248, 3 Terry 110. ...and others.

[17] Okl-Lockhart v. Anderson, 162 P 946, 62 Okl 209. Tex- Ex parte Newberg, 143 SW2d 786, 140 Tex Cr 211.

[18] Buck v. Harton, DCTenn, 33 FSupp 1014.

[19] Del- State v. Tabasso Homes, 28 A2d 248, 3 Terry 110. Fla.- Palm Beach Mobile Homes, Inc. v. Strong, 300

Court should find the Health Planning Act fails to meet those exceptional standards. The lower Courts have failed to address Mr. Adams complains he has been denied fundamental liberty rights including ***liberty of contract*** through the State's Health Planning Act. All Court rulings in this case have side stepped this issue of fundamental rights, and focuses on the right of the State to legislate in the broadest of circumstances. There has been no direct attention to Mr. Adams' fundamental rights including the right of liberty of contract. The District Court rulings indicate Mr. Adams' claim to fundamental rights is improper; Adams contends his claims are well defined in case law.

So2d 881. Mont.- State v. Gateway Mortuaries, 287 P 156, 87 Mont 225, 68 ALR 1512.

In our Country, everyone has the right to pursue any lawful profession.[20] Such a right is inherent,[21] and fundamental.[22] The right to follow a lawful occupation can not be taken away by special legislation.[23] Adams continues to complain he can not fully use his professional license to its full potential because of these contested State actions. Special legislative actions removed his right to practice Physical Therapy in the home setting and granted that right to the Home Health companies licensed by the State.

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[20] Acanfora v. Board of Education of Montgomery Co. DCMd, 359 FSupp 843, affirmed 491 F2d 498, certiorari denied 73 SCt 93, 419 US 836. Tenn- Nashville Memorial Hospital, Inc v. Binkley, 534 SW2d 318.

[21] Premier-Pabst Sales Co v. State Board of Equalization, DCCal, 13 FSupp 90.

[22] Cal- Bautista v. Jones, 155 P2d 343, 25 Cal2d 746. Fla- State ex rel Hosack v. Yocum, 186 So 448, 136 Fla 246, 121 ALR 270. Tex- Trewitt v. City of Dallas, Civ App 242 SW 1073.

[23] Fla- State ex rel Hosack v. Yocum, 186 So 448, 136 Fla 246, 121 ALR 270.

Adams has claimed that his right to practice home based Physical Therapy services (within compliance of the Tennessee Physical Therapy Practice Act), was *taken* from him and granted to the Home Care Organizations of Tennessee. The Lower Courts have held this to be a valid State action of regulation under the State's police powers. Virginia Courts have ruled otherwise: the right of an individual to engage in a lawful profession may not be arbitrarily taken from him and granted to another under the guise of regulation.[24]

A Physician has the fundamental right to practice his profession fully and capably.[25] Mr. Adams contends his right to practice Physical Therapy must be recognized in the full context. His liberty rights require that he be allowed to practice his licensed profession fully,

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[24] Va- Flax v. City of Richmond, 52 SE2d 250, 189 Va 273.

[25] Cal- Volpicelli v. Jared Sydney Torrence Mem. Hosp., 167 CalRptr 610, 109 CA3d 242.

including the home setting. The Tennessee Physical Therapy Practice Act[26] does not define the home setting as a limitation for practice. Adams contends when granted a Physical Therapist's license, he acquired an "estate" to practice Physical Therapy in any and all locations under the jurisdiction of the State of Tennessee. That "estate" is a property right very dear and valuable to Mr. Adams. The Health Planning Act violates his constitutional property and liberty rights to his Physical Therapist's license. A licensed professional may not have their 'estate' removed without due process of law.[27] Adams has repeatedly denied appropriate due process has been followed in this case.

Liberty embraces the right of every man to be free in the use of his powers, faculties, and property, and to

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[26] TCA 63-13- 101 to 109,and 301 to 317.
[27] *Dent v West Virginia, 129 U.S. 114 (1889); Board of Regents v. Roth, 408 US 564 (1972).*

adopt, pursue, and employ them in such a lawful way as he may choose, subject only to such restraints as are necessary to secure the common welfare.[28] Liberty under the law extends to full range of conduct which an individual is free to pursue.[29] Mr. Adams prays this Court will hear his case to define if the home setting is within the full range of conduct a Physical Therapist may pursue in Tennessee without their labor bound to a home health agency.

The right of personal liberty frequently includes other rights,[30] such as the absence of unreasonable and arbitrary restraint on a person in the conduct of his

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[28] Ill- City of Mt Vernon v. Julian, 17 NE2d 52, 369 Ill 447, 119 ALR 747.

[29] DC- Ricks v. District of Columbia, CA, 414 F2d 1097, 134 US App.DC 201.

[30] Ind- Kirtley v. State, 84 NE2d 712, 227 Ind 175. Mass- Simon v. Schwachman, 18 NE2d 1, 301 Mass 573. ND- State v. Cromwell, 9 NW2d 914, 72 ND 565. Va- Finney v. Hawkins, 54 SE2d 872, 189 Va 878.

business and the handling of his property[31]. Adams believes the Health Planning act poses unreasonable and unnecessary restrictions on his chosen profession. Civil Liberty incorporates the right of every person living under our government to acquire and dispose of property by lawful means and for lawful purposes, and to pursue any lawful profession in such a manner as suits him, provided only that he does not offend any superior social right, or the rights of others.[32] In all other settings, the Physical Therapy Practice Act serves to protect the public from incompetent or unskilled Physical Therapists. Only in the home setting is an additional license required. Reason leads Mr. Adams to question how home based Physical Therapy service poses any threat to the right of others, or offends a higher social right.

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[31] Neb.- McGraw Electric Co. v. Lewis & Smith Drug Co., 68 NW2d 608, 159 Neb. 703.
[32] NY- Bell v. Gaynor, 36 NYS 122, 14 Misc 334, 335.

The State's police powers may be used to protect the health and welfare of the public. However, the State may not under the guise of its police powers arbitrarily invade the liberty of the individual.[33] Mr. Adams continues to complain that the Health Planning Act is an arbitrary law; it has no rational basis for restricting his profession. A restriction based on locale bears no relationship to the skills required of a Physical Therapist in the home setting. The State may restrict the practice of a profession only based on the skills or experience.[34] Adams believes any reasonable man would hold the Health Planning Act is a protection for the Home Health Agencies of the State, and not a protection for the general welfare of the State's residents. As such, it violates *Lawton v. Steele, 152 U.S. 133 (1894).*

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[33] US ex rel Howard v. Ragen, D.C.Ill 59 F Supp. 374. .
[34] *Dent v West Virginia, 129 U.S. 114 (1889)* ; *Douglas v Noble, 261 U.S. 165 (1923).*

Adams clearly has a property right in the use of his professional license; it is his sole means of his livelihood. Property may not be confiscated without compensation or due process under the Fourteenth Amendment. Mr. Adams contends the State has improperly taken his right to acquire and accumulate property through the full use of his professional license. It is insulting to Mr. Adams that the State feels he is fully capable of providing Physical Therapy services in all other settings but the home. Without an additional license, Mr. Adams is qualified to provide his professional services (within the guidelines of the Tennessee Physical Therapy Practice Act) to the most critically ill patients in an intensive care unit, to patients with life threatening wounds and lesions, to world class athletes and aging recreational athletes, to patients with knee or hip replacement surgeries, or to those special

patients with tendon repairs. He can treat those patients in an office or public setting. (Consider: if a patient is transported to the public road in front of their home, the Health Planning Act does NOT apply restrictions to Mr. Adams' profession.) However, once the patient moves to a home setting, Tennessee law requires a second license, as a home care organization, to provide Physical Therapy Services in the home. Adams charges that this Act removes his constitutionally protected property right to provide his professional services to the patient, as well as his right to earn his livelihood and contract his services directly to that patient. Mr. Adams contends the State has improperly taken those rights, and granted his rights to provide his professional services to the Home Care Organizations of Tennessee. Such a 'taking' is

unconstitutional. Under its police powers, the State is without power to transfer property from one to another.[35]

The case of *Conn v. Gabbert, No. 97-1802. April 5, 1999.* , shows that due process in both substantive and procedural means is required from State actions. Adams believes his due process rights have been greatly violated by this legislative action. Mr. Adams received no notice of the 1994 revision of the Health Planning Act that removed his right to practice in the home setting. Substantive due process requires a reasonable review of this law. Adams contends it fails to pass constitutional muster.

The District and Appellant Courts have now sanctioned this process; the lower Courts have erred so greatly as to establish a new rule of law, one that threatens the most fundamental freedoms of our

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[35] Okl- Oklahoma Water Resources Bd v. Central Oklahoma Master Conservancy Dist. 464 P2d 748.

Constitution. Imagine our Country where attorneys could only legally practice in one of a handful of specially sanctioned law firms; or where doctors were required under law to work only for hospitals, forbidden to open their own private office or make house call unless under hospital employment; or where a teacher was required by law to work through a public school to tutor a student regardless of circumstance. The potential exists that all will have to provide their professional or occupational services through a very select few who held special licenses. Based on this case, those special licenses will not be readily achievable; The State may limit licenses to a select few through a process like the Certificate of Need process. While these situations may sound extreme, they are not only possible, but probable. Lower Courts have paved the way for States to invade two of the most fundamental rights we have: property and liberty. Mr.

Adams turns to the highest Court to protect all our rights under the Constitution and federal law.

It is the Constitutional duty of the Courts to safeguard personal liberties.[36]

The ADA claim

The District and Appellant Courts have both ruled Mr. Adams, as a Physical Therapist has no standing to file an ADA claim. Mr. Adams believes this is in error with the ADA itself. It is his belief that the ADA grants him the right to file claim in Federal jurisdiction under Title II of the ADA.

Congress authorized the US Attorney General to discuss and define the scope and intent of Title II[37]. The Attorney General held hearings and provided public notice of the proposed and final rulings of Title II. A final

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[36] Stone v. Powell, Cal., 96 SCt 197, 428 US 465.
[37] See: PL 101-336, ADA, SEC. 204. REGULATIONS.

ruling was published in the Federal Register on 7/26/1991, effective date of 1/26/1992.[38] In his discussion of Title II, the US AG describes how an "entity" associated with the disabled may also file claim under the ADA[39] for acts of State supported discrimination against that entity. Mr. Adams contends the State has improperly discriminated against him because of his attempted association to provide a health care service, Physical Therapy, to qualified disabled in their own homes.

28 CFR §35.130, paragraph (g) states:

> "*Paragraph (g), which prohibits discrimination on the basis of an individual's or entity's known relationship or association with an individual with a disability, is based on sections 102(b)(4) and 302(b)(1)(E) of the ADA. This paragraph was not contained in the proposed rule. The individuals covered under this paragraph are any individuals who are discriminated against because of their known association with an*

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[38] 28 CFR Part 35.

[39] 28 CFR §35.130 General prohibitions against discrimination; paragraph (g).

individual with a disability. For example, it would be a violation of this paragraph for a local government to refuse to allow a theater company to use a school auditorium on the grounds that the company had recently performed for an audience of individuals with HIV disease.

This protection is not limited to those who have a familial relationship with the individual who has a disability. Congress considered, and rejected, amendments that would have limited the scope of this provision to specific associations and relationships. Therefore, if a public entity refuses admission to a person with cerebral palsy and his or her companions, the companions have an independent right of action under the ADA and this section.

During the legislative process, the term "entity" was added to section 302(b)(l)(E) to clarify that the scope of the provision is intended to encompass not only persons who have a known association with a person with a disability, but also entities that provide services to or are otherwise associated with such individuals. This provision was intended to ensure that entities such as health care providers, employees of social service agencies, and others who provide professional services to persons with disabilities are not subjected to discrimination because of their professional association with persons with disabilities."

Mr. Adams contends that his professional association with the disabled has caused him to be discriminated against by the State's actions under the Health Planning Act. Adams believes the ADA grants him standing to file this claim in Federal Court. The District and Sixth Circuit have denied Mr. Adams such a claim. The Supreme Court now has the opportunity to validate Congress' legislative authority under the ADA for healthcare providers. The wide reaching effect of the District and Appellant Courts is that Congress did NOT authorize health care providers, or any other associate of the Disabled, discrimination protection from the State or State sanctioned actions under the ADA. It is Mr. Adams opinion that is far from what Congress or the US Attorney General intended when Title II was developed and implemented.

Conclusion

This case presents to this Court ideals that the Supreme Court established over a hundred years ago. The limits of a State's police powers versus the individual's rights to work. It introduces the potential for an *entity*, a healthcare professional, to initiate actions against the State under Title II of the ADA. Because the district and Sixth Circuit Courts have held this Health Planning Act valid, other States, as well as Tennessee now have the power to overrule an established series of precedents of past Court rulings. The definition of two of our most basic, fundamental, and natural rights, Liberty and Property, as well as the issue of an entity having standing to file an ADA claim, hang upon this Court's decision to review this case.

Appendix

Filed on June 23, 2003

N0. 02-5579

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT COURT

Daniel S Adams	)	
	)	
Plaintiff-Appellant	)	
	)	
v.	)	ORDER
	)	
	)	
STATE OF TENNESSEE;	)	
DON SUNDQUIST;	)	
PAUL G. SUMMERS	)	
	)	
Defendants-Appellees	)	

Before DAUGHTREY, and ROGERS, Circuit Judges; QUIST, District Judge.

Daniel S Adams, a Tennessee resident, appeals a district court order dismissing his civil rights complaint filed under 42 U.S.C. { 12112 and 12117. Named as defendants are the State of Tennessee, Governor Don Sundquist, and Tennessee Attorney General Paul G. Summers. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel

unanimously agrees that oral argument is not needed. Fed. R. App. P. 34 (a).

In his complaint, Adams states that he has been a physical therapist for over fifteen years and has been licensed by the State of Tennessee as a physical therapist for over nine years, working in a variety of settings including acute care hospitals, long term care, and home health services, both as an employer and a contractor. He states he has established a corporation to provide services as an "independent Physical Therapist" and has obtained additional certification to participate in the Medicare program. He states one of the goals of the corporation is to provide home based physical therapy services within the state and federal guidelines. Adams challenges the constitutionality of certain Tennessee statues that regulate physical therapy services in the home. Specifically, he contends that the defendants' regulation of home-health services violates due process by arbitrarily denying him of his right to use his physical therapy license to offer services in the home of patients. He further contends that the defendants' regulation of home health services violates his right to equal protection. Lastly, although his does not allege that he is a disabled person within the meaning of the ADA, he purports to assert the rights of other individuals under the ADA. Adams seeks injunctive relief.

The defendants filed a motion for judgment of the pleadings pursuant to Fed. R. Civ. P. 12(c). The district court granted motion the motion in a memorandum filed March 6, 2002. Reconsideration was denied. This appeal followed.

We review de novo a judgment on the pleadings under Fed. R. Civ. P. 12(c). *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 511-12 (6th Cir. 2001). "In reviewing the motion, [the court] must construe the complaint in the light most favorable to the plaintiff,... and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief" *Id* at 512.

Upon review, we conclude the district court properly dismissed the complaint for the reasons stated by that court. First, Adams lacks standing to assert the rights of individuals covered by the ADA. The United States Supreme Court's prudential standing principles impose a "general prohibition on a litigant's raising another person's legal rights." *Allen v. Wright*, 468 US 737, 751 (1984). Adams has not identified any obstacle preventing individuals with disabilities from asserting claims on their own behalf, nor has he shown any special relationship with those rights he seeks to assert. *Caplin v. Drysdale, Chartered v. Untied States*, 491 US 617, 623 n.3 (1989). Consequently, he may not assert the rights of individuals covered by the ADA.

Second, Adams has stated no colorable due process claim. The procedural component of the Due Process Clause does not impose a constitutional limitation on the power of the legislature to make substantive changes in the law. *E.g., Adkins v. Parker*, 472 US 115, 129 (1984). Nor is there a basis for the finding a substantive due process violation. The Tennessee statue in question, *i.e.*, Tenn. Code Ann. {68-11-2011(1)(D), does not infringe on fundamental rights. The act is not arbitrarily applied only to physical

therapists such as Adams. Adams is not being deprived of any right that he had to practice physical therapy in the home, but is seeking to avoid rational state statues that regulate home health services. The statue, in short, does not violate Adams' due process rights.

Finally, the statue in question does not deny Adams' equal protection rights because these statues serve a legitimate governmental purpose by regulating home health services. *See Heller v. Doe by Doe*, 509 US 312, 319-21 (1993) (highly deferential rational basis standard applied to equal protection claim not involving fundamental rights or suspect class).

Accordingly, the district court's order is affirmed. Rule 34(j) (2) (C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

Filed on June 23, 2003

Appendix

Filed September 12, 2003

No 02-5579

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Daniel S Adams
Plaintiff-Appellant

v.

State of Tennessee, et. Al.
Defendants-Appellees

BEFORE: Daughtery and Rogers, Circuit Judges, and Quist[1], District Judge.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court has requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

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[1] Hon Gordon J. Quist, United States District Judge for the Western District of Michigan, sitting by designation.

ENTERED BY ORDER OF THE COURT.

_____/s
Leonard Green, Clerk

Filed September 12, 2003

Tennessee Code, (in effect March, 2001.)

68-11-102. Definitions

As used in this part, unless the context otherwise requires:

(1) "Certificate of Need" means a permit granted by the health facilities commission to any person for the establishment or modification of a health care institution, facility, or covered health service, at a designated location.

(2) "Department" means department of health;

(3) "Facility" means any real property or equipment owned, leased, or used by a health care institution for any purpose, other than as an investment;

(4) (A) "Health care institution" means any agency, institution, facility or place, whether publicly or privately owned or operated, which provides health services and which is one (1) of the following: nursing home; recuperation center; hospital; ambulatory surgical treatment center; birthing center; mental health hospital; mental retardation institutional habilitation facility; **home care organization or any category of service provided by a home care organization for which authorization is**

required under part 2 of this chapter (*emphasis added, DSA*) ; outpatient diagnostic center; rehabilitation facility; residential hospice; non-residential methadone treatment facility or mental health residential treatment facility;

(B) "Health care institution" does not include:

(i) Ground ambulances;

(ii) Homes for the aged;

(iii) Any premises occupied exclusively as the professional practice office of a physician licensed pursuant to the provisions of title 63, chapter 6, part 2 and title 63, chapter 9, part 1, or dentist licensed by the state and controlled by such physician or dentist;

(iv) Administrative office buildings of public agencies related to health care institutions; or

(v) Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ Science, Boston, Massachusetts;

(5) "Health facilities commission" and "commission" means the commission created by this part to administer the certificate of need program;

(6) "Health service" means clinically related (i.e., diagnostic, treatment, or rehabilitation) services and

includes those services specified as requiring certificate of need under {69-11-106;

(7) " Home care organization" means any entity licensed as such by the department which is staffed and organized to provide "home health services," "hospice services," or "home medical equipment services" as defined by {68-11-201, to patients in either their regular or temporary place of residence;

[sections 8-14 omitted]

68-11-106. Certificate of need – Exemption.

(a) On or after April 12, 1993, no person may perform the following actions in the state except after applying for and receiving a certificate of need for the same:

[sections 1-3 omitted]

(4) Initiation of any of the following healthcare services: air ambulance service, burn unit, neonatal intensive care unit, open heart surgery, extracorporeal lithotripsy, magnetic resonance imaging, cardiac catheterization, linear accelerator, positron emission tomography, swing beds, **home health** (*emphasis added, DSA)* , hospice, outpatient surgery (not including outpatient surgery in a physician's office not licensed as an ambulatory surgery treatment center), psychiatric, rehabilitation

or hospital based alcohol and drug treatment for adolescences provided under a systemic program of care longer than twenty-eight (28) days, or methadone treatment provided through a facility licensed as a non-residential methadone treatment facility. The provisions of this subdivision shall not apply to the initiation of linear accelerator services by a general acute care hospital with three hundred (300) of more licensed beds, including beds licensed for mental health and skilled nursing services; provided, that coinciding with the initiation of linear accelerator services, such hospital or affiliate thereof ceases to provide linear accelerator services at another location within the same metropolitan statistical area.

[sections 5-6 omitted]

68-11-201. Definitions.

[sections 1-11 omitted]

12(A) "**Home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence. An entity is a**

"home care organization" if it does any of the following:

(i) holds itself out to the public as providing home health services, home medical equipment services or hospice services;

(ii) Contracts or agrees to deliver home health services, home medical equipment services or hospice services;

(iii) Accepts, in the organizations name, physician orders for home health services, home medical equipment services or hospice services;

(B) The absence of one (1) or more of the above factors does not necessarily exclude the entity from the meaning of this definition; *(emphasis added, DSA)*

(C) If the entity is not included within the previous terms of this definition, the entity shall not be considered to be a "home care organization" solely because it offers to refer individuals who are available for employment by consumers through personal contract or individual agreement to deliver home health services, home medical equipment services or hospice services which is either within the scope of the individual's profes ional license or is a home maker service, and which service must be delivered independently of the agency or organization which made the referral;

(D) The board shall establish by rules standards for a home care organization to be qualified to provide the following categories of services: home health services, home medical equipment services or hospice services. **No person shall provide a designated category of service unless appropriately authorized by the board.** (*Emphasis added, DSA)* Licensure surveys of a home care organization shall be specific to the types of service categories for which the home care organization has been authorized. The standards for hospice shall include requirements for a medically directed team of professionals and volunteers to create a program of care to meet the medical, social, psychological, emotional, spiritual, and other special needs that are experienced in the final stages of illness, during dying and bereavement for families following the death of the patient.

[Section 13 omitted]

(14) "Home for the aged resident" means a person who is ambulatory and receives permanent domiciliary care but will be transferred to a licensed hospital, a licensed assisted living facility, or a licensed nursing home when health care services are needed which must be provided in such other facilities.

(A) "**Home health service" means a service provided an outpatient by an appropriately licensed health care professional or an**

appropriately licensed qualified staff member of a licensed home care organization in accordance with orders recorded by a physician, and which include one or more of the following: *(emphasis added, DSA)*

(i) Skilled nursing care including part time or intermediate supervision;

(ii) **Physical** *(emphasis added, DSA)*, occupational, or speech **therapy** *(emphasis added, DSA)*;

(iii) Medical social services

(iv) Home health aide services

(v) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of, or though the provision of, the services described in subdivisions (12) (A)-(D);

(vi) [omitted]

sections (B)-(F) omitted

sections 16-32 omitted.

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF TENNESSEE AT

GREENEVILLE

Filed: March 6, 2002

DANIEL S ADAMS	)	
	)	
V.	)	NO. 2:01-CV-83
	)	
STATE OF TENNESSEE, ET AL.	)	
	)	

ORDER

For the reasons set out in the memorandum that accompanies this order, it is hereby ORDERED that the defendants' motion for judgment on the pleadings, [Doc. 18] is GRANTED, and the plaintiff's complaint is DISMISSED. All other pending matters are now MOOT.

ENTER:

/s
THOMAS GRAY HULL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF TENNESSEE AT

GREENEVILLE

Filed: March 6, 2002

DANIEL S ADAMS	)	
	)	
V.	)	NO. 2:01-CV-83
	)	
STATE OF TENNESSEE, ET AL.	)	
	)	

MEMORANDUM

In this Section 1983 complaint, the plaintiff challenges the constitutionality of certain Tennessee statutes that regulate physical therapy services in the home and plaintiff asserts disability discrimination claims pursuant to the Americans With Disabilities Act (ADA) at 42 U.S.C. {{ 12112 and 12117. This matter is presently before the Court to address a motion for judgment on the pleadings filed by the defendants. [Doc 18].

AMERICANS WITH DISABILITIES ACT CLAIMS

The plaintiff does not allege he is a disabled person within the meaning of the Americans With Disabilities Act (ADA) at 42 U.S.C. {{ 12111 and 12117, but purports to assert the rights of other individuals under the ADA. The United States Supreme Court's prudential standing principles impose a "general prohibition on a litigant's raising another's person's legal rights." *Allen v. Wright 468 US 737, 751 (1984).* The plaintiff has not identified any obstacle preventing individuals with disabilities from asserting claims on their own behalf, nor has shown any any special relationship with those whose rights he seeks to assert. *Caplan & Drysdale, Chartered v. United States,* 491 US 617, 623, n. 3, (1989). Accordingly, the plaintiff may not assert the rights of individuals covered by the ADA and the defendants are entitled to judgment on the pleadings in regard to his ADA claims.

ARBITRARY DENIAL OF A PROPERTY RIGHT

The plaintiff contends that the defendants' regulation of home health arbitrarily denies him of his right to use his physical therapy license to offer services in the home of patients. The "Tennessee Health Planning and Resource Development Act of 1987," provides at Tenn. Code Ann. [68-11-201 (14) (D):

> The Board shall establish by rules standards of authorization for a home care organization to be qualified to provide the following categories of services: home health service, home medical equipment services or hospice services. No person shall provide a designated category of services unless appropriately authorized by the board. (emphasis added).
>
> Under [68-11-201, home health service is defined as follows:
>
> (17)(A) "Home Health Service" means a service provided an outpatient by an appropriately licensed health care professional or an appropriately qualified staff member of a licensed home care organization in accordance with orders received by a physician, and which includes one (1) or more of the following:
>
> (i) Skilled Nursing care including part-time or intermittent supervision;
>
> (ii) Physical, occupational, or speech therapy;

> (iii) Medical Social services;
> (iv) Home health aide services;
> (v) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of, or through the provision of, the services described in subdivisions (12)(A)-(D);
> (vi) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home care organization at a hospital, nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in the individual's home, or which are furnished at such a facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service... .

The plaintiff contends that he has found no other state that has comparable legislation although he has searched the law of 20 different states. However, the Act specifically notes that Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, and Virginia also have health planning and resource development acts. The plaintiff also ignores the fact

that this act is not arbitrarily applied to only physical therapists such as himself.

The plaintiff contends that he learned of Tenn. Code Ann. {68-11-201 which requires that physical therapy on an outpatient basis be provided by a licensed home care organization "one year ago". However, this statue has been in place since 1987 as clearly noted in the short title of the part in which it is contained, i.e., the "Tennessee Health Planning and Resource Act of 1987." Therefore, when the plaintiff obtained his license nine years ago, he took his license subject to the Act already in place.

The Court finds that the plaintiff is not being deprived of any right that he had to practice physical therapy in the home, but is seeking to avoid rational state statues that regulate home health services. Because he is seeking to expand his license to include rights that he never had under state law, the Court finds that he has not been deprived of any

property interest which was created when he received his state license.

Accordingly, the defendants are entitled to judgment on the pleadings in regard to this claim.

EQUAL PROTECTION CLAIMS

The Equal Protection Clause commands that no State shall "deny to any person within its jurisdiction the equal protection of the law." This provision creates no substantive rights. *San Antonio Independent School Dist. V. Rodriguez,* 411 US 1, 33 (1973). If a legislative classification or distinction "neither burdens a fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation to some legitimate end." *Romer v. Evans,* 517 US 620, 631 (1996). The Tennessee statutes in question neither infringe on a fundamental right nor involve suspect classifications, e.g., *Washington v. Glucksberg,* 521 US 702, 719-726 (1997), and therefore are entitled to a strong

presumption of validity, *Heller v. Doe*, 509 US 312, 319 (1993).

As explained by the Untied States Supreme Court in *Heller v. Doe by Doe*, 509 US 312, 319-321 (1993):

> We many times have said, and but weeks ago repeated, that rational basis review in equal protection analysis "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." FCC v. Beach Communications, Inc., 508 U.S. 307, 313 (1993). See also e.g., Dandridge v. Williams, 397 U.S. 471, 486 (1970). Nor does it authorize "the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." New Orleans v. Dukes, 427 U.S. 297, 303 (1976) (per curiam). For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. [509 U.S. 312, 320] See, e.g., Beach Communications, supra, at 314-315; Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 462 (1988); Hodel v. Indiana, 452 U.S. 314, 331 -332 (1981); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 314 (1976) (per curiam). Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. See, e.g., Nordlinger v. Hahn, 505 U.S. 1 >, 11 (1992); Dukes, supra, at 303. Further, a legislature that creates these categories need not "actually

articulate at any time the purpose or rationale supporting its classification." Nordlinger, supra, at 15. See also e.g., United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 179 (1980); Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 528 (1959). Instead, a classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Beach Communications, supra, at 313. See also, e.g., Nordlinger, supra, at 11; Sullivan v. Stroop, 496 U.S. 478, 485 (1990); Fritz, supra, at 174-179; Vance v. Bradley, 440 U.S. 93, 111 (1979); Dandridge v. Williams, supra, at 484-485.

A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. "[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." Beach Communications, supra, 315. See also, e.g., Vance v. Bradley, supra, at 111; Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 812 (1976); Locomotive Firemen v. Chicago, R.I. & P. R. Co., 393 U.S. 129, 139 (1968). A statute is presumed constitutional, see supra, at 319, and "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it," Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973) (internal quotation marks omitted), whether or not the basis has a foundation in the [509 U.S. 312, 321] record. Finally, courts are compelled under rational basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational basis review because it "`is not made with mathematical nicety or

> because, in practice, it results in some inequality.'" Dandridge v. Williams, supra, at 485, quoting Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911). "The problems of government are practical ones and may justify, if they do not require, rough accommodations - illogical, it may be, and unscientific." Metropolis Theatre Co. v. Chicago, 228 U.S. 61, 69-70 (1913). See also, e.g., Burlington Northern R. Co. v. Ford, 504 U.S. 648, 651 (1992); Vance v. Bradley, supra, at 108, and n. 26; New Orleans v. Dukes, supra, at 303; Schweiker v. Wilson, 450 U.S. 221, 234 (1981). (emphasis added).

The Court finds that the statutes before this Court are accorded a strong presumption of validity and these statutes serve a legitimate legislative governmental purpose by regulating home health services. The Court finds that the plaintiff has failed to carry his burden as the "one attacking the legislative arrangement to negate every conceivable basis which might support it." Therefore, the Court finds that these statutes survive a rational-basis review because Tennessee has proffered a legitimate purpose for the statutes in question for which there is a rational relation to a legitimate end, i.e.,

to provide adequate guidelines in the context of state health needs for a state health plan.

CONCULSION

Based upon the foregoing reasons, the Court finds that the defendants are entitled to a judgment on the pleadings.

An appropriate order shall issue.

ENTER:

_____/s

THOMAS GRAY HULL

UNITED STATES

DISTRICT JUDGE